IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.741 OF 2006
WITH
CIVIL APPLICATION ST.NO.229 OF 2007

Mars Enterprises. ..Appellant.

V/s.

Narang Overseas Pvt.Ltd. & Ors. ..Respondents.

WITH

APPEAL FROM ORDER NO.742 OF 2006
WITH
CIVIL APPLICATION ST.NO.231 OF 2007

Ashok Narang. ..Appellant.

V/s.

Narang Overseas Pvt.Ltd. & Ors. ..Respondents.

Mr.R.N.Narula with A. Dasgupta i/b Jhangiani Narula & Associates for appellants.

Ms.Rajani Iyer,Sr.Counsel with S.N.Trivedi i/b. K.D.Abichandan for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 2, 2007.

P.C. :

1. This Judgement will dispose of both these appeals as they involve common question arising between the same parties.

2. Heard counsel for the parties.

3. Admit.

4. Ms.Rajani Iyer i/b.K.D.Abichandan waives notice for respondent No.1. None appears for respondent No.2 society though served. None appears for respondent No.3 BEST undertaking.

5. As short question is involved, matter is taken up for final hearing forthwith by consent of the contesting parties.

6. These appeals from order take exception to the Judgment and Order passed by the Bombay City Civil Court at Bombay dated 31st August, 2006 in Notice of Motion Nos. 1877/2006 and 1878/2006. Appeal from order No.741 of 2006 pertains to the Flat No.5 in Beach View Cooperative Housing Society Ltd.. Appeal From Order No.742 of 2006 is concerned with the flat No.9 in Beach View Cooperative Housing Society Ltd.. The appellants in the respective appeals filed suit before the City Civil Court, Bombay for permanent injunction against the defendant No.1 and 2 from obstructing, interfering with, preventing the officers and workmen of defendant No.3 from coming upon the compound of the society, in particular to install electric meter and restore

electric connection to the respective flats. During the pendency of the said suit the appellants took out Notice of Motions for interim relief. The interim relief claimed in the Notice of Motions is for temporary injunction on the same terms, on which substantive relief is claimed in this suit. The case of the appellants rests on the assertion that the flats in question have come to the share of their predecessor Manu Sewaram Narang. The appellant in appeal from order No.741 of 2006 is a partnership firm, in which Ashok Manu Narang, Sanjay Manu Narang and Rachana Manu Narang are partners. They claim to have inherited right in respect of the flat No.5 through their predecessor Manu Narang and have contributed their right, title and interest therein to constitute capital of the firm. It is in that context the partnership firm has instituted suit for the relief referred to above. The grievance of the appellants is that inspite of family arrangement entered between the family of Narang and the companies and firms represented by them dated 30th January, 1992, the defendant No.1 was creating obstacles for restoration of electric supply to the respective suit flats and/or installation of electric meters. The stand taken by the appellants was resisted before the trial Court, who in turn has

found that the appellants were unable to establish the fact that they were owners of the suit flat or for that matter were occupiers therein. It is on that finding notice of motions have been dismissed.

7. The controversy that arises in the present case will have to be examined on the context of requirement of Section 43 of Electricity Act. In terms of that provision, the owner as well as occupiers are entitled to apply for electricity connection from the electric supply company. According to the appellants they are the owners of the respective flats having inherited right, title and interest from their predecessor Manu Narang, in whose favour the suit flats devolved in terms of family arrangement dated 30th January, 1992 and the assignment deed dated 13th February, 1992. It is also asserted that from the clauses contained in family settlement, it is more than clear that the defendant No.1 and other family members have admitted the fact that Manu Sewaram Narang was the monthly tenant in respect of the respective flats. There is nothing on record to indicate that Manu Narang had lost possession of the suit flats or his tenancy was determined, until he was alive. It is common ground that Manu Narang has died in 2001. It is after his

death, the present appellants claim to have inherited the suit flats in view of the Will left behind by Manu Narang. These facts are indisputable.

8. We shall now turn to the contents of the family arrangement. In so far as flats in question, clause-v of the family arrangement at page 175 provides as follows:

> "v) The said Manu Narang Group are monthly tenants of NOPL in respect of the premises on the 1st and 2nd floors of the said building Beach View. The reversionary rights in the said premises (save and except one room on the first floor as per the plan annexed) shall be transferred to the said Manu Narang Group at a consideration equal to 120 times the standard rent payable in respect thereof. Stamp duty payable on such transfer shall be borne by the said Manu Narang Group and the Society's transfer charges shall be borne by the said Manu Narang Group and the said Rajesh Narang Group equally. Possession of the aforesaid one room shall be forthwith returned by the said Manu Narang Group to NOPL. NIHPL and the said Manu Narang Group shall not do anything to prevent the said Rajal Narang Group from going to and from his said room." 175-176.

According to the appellants, The defendant No.1 assigned the flats in favour of Manu Narang in terms of assignment deed dated 13th February, 1992. The defendant No.1 however, would contend that the assignment deed cannot be looked into as the same has been executed purportedly by claiming himself to be

the director of the defendant No.1 Company; when in fact, he had already resigned as Director on 30th January, 1992. It is not necessary for this Court to go into the correctness of the said plea taken by the defendant No.1 for the purpose of present proceeding. All that is required to be considered is whether the appellants were the owners or occupiers so as to be eligible to apply for installation of electricity meter and/or restoration of electric supply in the suit flats.

9. In so far as their claim of ownership is concerned, from the family arrangement it is obvious that the flats have been given as reversionary rights in favour of Manu Narang in consideration of reciprocal promise made in respect of the other property referred to in the family arrangement and upon 120 times standard rent payable in respect of the flats. It is also not in dispute that the Manu Narang left behind Ashok, Sanjay and Rachana. Ashok, Sanjay and Rachana after demise of Manu Narang have formed the partnership firm and that partnership has instituted present suit. Suffice it to observe that from the family arrangement, factum of possession of respective suit flats vested with Manu Narang Group is admitted by the parties, as can be discerned from

language of clause-v thereof, already reproduced in the earlier part of the Judgment. Significantly, the shares of the Housing Society in relation to the Suit flats are transferred in favour of the appellants. The fact that the said decision is pending challenge will make no difference to answer the point in issue.

10. As is stated earlier, there is nothing on record to show that Manu Narang Group was dispossessed from the suit flats at any point of time or their monthly tenancy has been terminated by NOPL. If it is so, claim of the appellants that they are the occupiers of the said flats claiming through said Manu Narang cannot be doubted, in any case, at this interlocutory stage. On this finding, it necessarily follows that the appellants would be entitled to pursue their claim with the electricity board for installation of electricity meter in the respective flats and for restoration of electricity supply therein.

11. Counsel for the defendant would contend that the electricity board has granted qualified permission to the appellants on their complying certain requirements referred to in the communication dated 19th October, 2005 at page 196. The appellants

would however, contend that the issues raised in communication dated 19th October, 2005 are non-existing issues, as the BEST has accepted amount subsequently. In my opinion, that is a matter which will have to be scrutinized by the BEST undertaking. All issues in that behalf will have to be considered on its own merits by BEST undertaking, notwithstanding the decision of this Court that the appellants are entitled to pursue their claim for installation of electricity meter in the suit flats and for restoration of electricity supply therein.

12. It is also made clear that any opinion expressed in this Judgment will not come in the way of the parties to pursue their respective claims in other proceedings pending before this Court.

13. For the aforesaid reasons, appeals ought to succeed. Accordingly, the impugned Judgment and orders are set aside and instead the respective notice of motions are made absolute in terms of prayer clause (a), subject to observations made earlier.

14. Accordingly, both the appeals and respective civil applications disposed of on the above terms.